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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. Nos. 53 to 58 of 1992
Date of decision: 6.2.2007

The Commission of Income-Tax, Jalandhar ...Petitioner

Versus

Shri Mulkh Raj Sharma, 170-171, Vijay Nagar, Jalandhar

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Bansal, Advocate for the Revenue.

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RAJESH BINDAL, J.

The Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short , 'the Tribunal) has referred following question of law for opinion of this Court, emerging from its common order dated 18.5.1990 in ITA Nos. 532 to 537/ASR /1989 for the assessment years 1966-67, 1967-68, 1969-70, 1971-72, 1972-73 and 1973-74:-

> "Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal was right in cancelling the order passed by the CIT under Section 263 of the Income-Tax Act, 1961?"

Brief facts as noticed in the Statement of case are as under:-

> "3. Briefly, the facts are that the assessee is an individual. He was detained under COFEPOSA. On 8.10.1971, Indian Currency amounting to Rs. 6,50,000/- was seized from the possession of Sh.Vinod Kumar son of the assessee by the Enforcement Officers at Delhi and Sh.Vinod Kumar, in his statement stated that the amount of Rs. 6,50,000/- was entrusted to him by Sh. Mulakh Raj Sharma, the assessee at

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Jalandhar. As a result of this, the proceedings for the asstt. years under consideration were reopened and the ITO made the original assessment for the asstt. Year 1966-67 on 26.3.1979, which was set aside by the AAC on 2.1.1983. Fresh assessment was made on 24.3.1987, which has been set aside by the CIT u/s 263.

3.2 For the asstt. year 1967-68, the original assessment was made by the ITO on 12.3.1980 which was set aside by the AAC on 20.1.1983. Fresh assessment was made on 24.3.1987, which has been set aside by the CIT under section 263.

3.3 For the asstt. year 1969-70, original assessment was made on 24.3.1982 u/s 144, which was reopened by the ITO under Section 146 on 31.3.1982. Fresh assessment was made on 28.3.1984 which was again reopened by the ITO u/s 146 and fresh assessment was made on 24.3.1987, which has been set aside by the CIT u/s 263.

3.4 For the asstt. year 1971-72 original assessment was made on 24.3.1982 u/s 144, which was reopened by the ITO u/s 146 on 25.3.1984 and fresh assessment made by the ITO on 24.3.1987, which has been set aside by the CIT u/s 263.

3.5 For the assessment year 1972-73, original assessment was made on 28.1.1975, which was set aside by the AAC on 21.10.1976. Fresh assessment was made on 29.3.1975, which was set aside by the AAC on 7.6.1979. Assessment was again made on 22.3.1982 which was reopened u/s 146 on 28.3.1984. Fresh assessment was framed on 24.3.1987, which has been set aside by the CIT u/s 263.

3.6 For the asstt. year 1973-74 original assessment was made on 22.3.1982, which was reopened by the ITO u/s 146 on 28.3.1984 and the fresh assessment made on 24.3.1987, which has been set aside by the CIT u/s 263."

Against the order passed under Section 263 of the Act, the assessee preferred appeals before the Tribunal. The Tribunal considering

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the entire matter in detail, item wise for each assessment year, opined that the Commissioner was not justified in holding that the orders passed by the Assessing Officer for the assessment years under appeal were erroneous and prejudicial to the interest of revenue. While referring to findings recorded by the Tribunal in paras 11 to 17 of the order, as are extracted in the statement of case, even learned counsel for the revenue could not make out a case for reopening of the assessment under Section 263 of the Act. The view expressed by the Tribunal is a possible view in the facts and circumstances of the case. Merely because second opinion is possible this court would not like to substitute the same.

Accordingly the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Rajesh Bindal)
Judge

February 06 ,2007 **(M.M.Kumar)**
Pka **Judge**